CF0000060992

CA 946/96 (2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

Division Bench (Criminal)

# APPEAL OF PRISONER

No. 901 Name सुकरु खरिया

Father's name पलरस खरिया

Residence सा॰ होरडांडाना लेखेरी Age 25 वर्ष

Sentenced to आजीवन कारावास एवं तीन वर्ष On 16/4/96

Under section 302, 34, 201 by द्वि॰ अपर सत्र न्यायाधीश रायगढ़

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It is explained to the prisoner that if he states of wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ..... 16.4.96 (7 copy)

2 Date on which copy received ..... 16.4.96

3 Date on which Appeal sent ..... 18.4.96

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 901 Name सुकरु खरिया

Confined in जिला Jail रायगढ़ (म.प्र.)

No. 899 Dated 18.4.96 199

Forwarded to the CHIEF JUDICIAL MAGISTRATE रायगढ़ (म.प्र.)

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- निर्णय प्रतिलिपि।

रामलाल एवं लोकराय (सभी)

Superintendent
अधीक्षक
जिला जेल रायगढ़ (म.प्र.)

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Date of receipt in ..... office

Date of receipt record to aecompany the

Memo of Appeal to the Appellate court

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No C/C 1296 Dated 25/6 199

Forwarded to the Subordinate Criminal Section

(C. V. V.)
मुख्य न्यायिक दण्डाधिकारी
रायगढ़ (म.प्र.)
(P.R.T.O.)

Date of receipt in Appellate Court

(26)

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

**Criminal Appeal No. 938 of 1996**

Ramlal

Vs.

State of Madhya Pradesh

**Criminal Appeal No. 939 of 1996**

Laisai

Vs.

State of Madhya Pradesh

**Criminal Appeal No. 940 of 1996**

Sukru Khedia

Vs.

State of Madhya Pradesh

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**JUDGEMENT FOR CONSIDERATION**

Sd/-
DHIRENDRA MISHRA
Judge

**HON'BLE SHRI L.C.BHADOO ,J.**

Sd/-
L.C.BHADOO
Judge

**POST FOR JUDGMENT ON 6th FEBRUARY 2006**

Sd/-
Dhirendra Mishra
Judge

(27)

**HIGH COURT OF CHHATTISGARH: BILASPUR**

**Division Bench: Hon'ble Shri L.C.Bhadoo**
**& Hon'ble Shri Dhirendra Mishra, JJ**

**Criminal Appeal No. 938 of 1996**

**Appellant : Ramlal**

**Vs.**

**Respondent : State of Madhya Pradesh**

**Criminal Appeal No. 939 of 1996**

**Appellant : Lalsai**

**Vs.**

**Respondent : State of Madhya Pradesh**

**Criminal Appeal No. 940 of 1996**

**Appellant : Sukru Khedia**

**Vs.**

**Respondent : State of Madhya Pradesh**

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Appellants by Smt. Savita Tiwari, Advocate.
State by Shri U.N.S.Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer.

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**JUDGMENT**
**(Delivered on 6th/02/2006)**

**Per Dhirendra Mishra, J**

The above criminal appeals are being disposed of by this common judgment.

2. The appellants of the above criminal appeals have preferred these appeals through Superintendent, District Jail, Raigarh as they have been convicted under Sections 302/34 and 201 of Indian Penal Code and sentenced to undergo life imprisonment under Section 302/34 of the IPC and three years' rigorous imprisonment under Section 201 of the IPC by learned II Additional Sessions Judge, Raigarh vide his judgment dated 16.04.1996 passed in Sessions Trial No. 152/95. Both the sentences were directed to run concurrently.

3. Case of the prosecution, in brief, is that Budhuram Khadia lodged the report of Ex.P/7 dated 21.03.2005 in the Police Station-Lailunga, Distt-Raigarh mentioning therein that on 28.03.1995 in the evening at about 7.00 p.m. his elder brother Mangal Sai went to the house of one Rupdhar Mahkul on invitation and did not return in the night. When in the morning of 21.03.1995 at about 6.00 a.m. his nephew Phul Singh went to fetch water from the well constructed in the field of Mangal Kanwar he found the dead body of Mangal Sai Khadia lying in the well and he informed about the same to the complainant whereupon the complainant narrated the incident to other villagers and Sarpanch-Tarachand Paikra. Thereafter all of them went towards the well and saw the dead body of deceased Mangal Sai. They also saw injury over right temple near eye of the deceased and bloodstains over the stones of *jagat* (the high platform surrounding a well). They further spotted the trail of blood drops from well up to the house of Lalsai. Blood was also spread in the courtyard of Lalsai. On enquiry Maniram Uranv- father of Lalsai informed that in the night of Monday i.e.20.03.1995 at about 9.00 p.m. Sukru Khadia came to his house and demanded *kosna* (home-made liquor) and thereafter Sukru Khadia called deceased Mangal Sai and all of them consumed *kosna*. In the meanwhile Sukru Khadia started abusing Mangal Sai and assaulted him with club and told Ramlal and Lalsai to beat Mangalsai otherwise he would beat them. Thereafter, Sukru Khadia, Ramlal assaulted Mangal Sai with club and Lalsai beat him by hand and fists. When Mangal Sai died they took up

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his dead body and took it towards the forest. On the basis of above report after registering the offence under Section 302/34 of the IPC investigation was commenced.

4. During investigation merg intimation of Ex.P/8 was recorded on 21.03.1995 and inquest (Ex.P/2) over the dead body of Mangal Sai was performed after due notice to the witnesses in their presence. Dead body was sent for autopsy to Community Health Centre, Lailunga, Distt-Raigarh and Dr. Shailendra Upadhyaya (P.W.8) conducted postmortem and submitted his report of Ex.P/10. According to the opinion of doctor cause of death was asphyxia due to compression of chest which was caused due to blunt injury over the chest and the death was homicidal in nature. During investigation bloodstained Dhoti and woolen shawl of the deceased sent in a sealed packet by the doctor were seized. Panchanama of Ex.P/6 signed by Narayan Prasad Paikra, Sudarshan, Dayaram, Ghurau and Tarachand Paikra was prepared. Spot maps of Ex.P/13 and Ex.P/14 were prepared by Halka Patwari (P.W.10) on 28.04.1995. Spot map of ExP/16 was prepared by Assistant Sub-Inspector (P.W.11). Bloodstained stone of *jagat* and bloodstained dry grass were seized from near the well vide Ex.P/19. Bloodstained soil and plain soil were seized from the courtyard of accused Lalsai vide Ex.P/20. On the basis of memorandum (Ex.P/21) of accused Sukru bloodstained club was seized under Ex.P/22. On the memorandum (Ex.P/23) of accused Ramlal another bloodstained club was seized vide Ex.P/24. Bloodstained clothing of Sukru was seized vide Ex.P/25. Bloodstained Lungi was seized from Lalsai vide Ex.P/26. Bloodstained Lungi was also seized from Ramlal vide Ex.P/27. The above seized articles were sent for chemical analysis to Forensic Science Laboratory, Raipur vide Ex.P/29. The F.S.L. report of the above articles is Ex.P/32. The articles on which bloodstain was confirmed by the F.S.L. were further sent for examination to Serologists who found human blood over shawl and Dhoti worn by the deceased and opined that shawl and Dhoti were stained with human blood, however, blood group of the stains on

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the items cannot be determined as the sample was not sufficient for test. The Serologists further reported that bloodstains over the other articles being soil and lungi were disintegrated. Report of the serologists is Ex.P/33.

5. After investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Katghora who in turn committed the case to the Sessions Judge, Raigarh and the learned Additional Sessions Judge received the same on transfer for trial. Learned trial Court framed charge under Sections 302/34 and 201 of the IPC against the accused/appellants. The appellants abjured their guilt.

6. The prosecution in all examined 12 witnesses to establish its case and thereafter statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure. The appellants denied the circumstances appearing in the prosecution case against them and submitted that they are innocents and have been falsely implicated in the offence.

7. After hearing learned counsel for the respective parties, learned trial Court held the appellants guilty under Sections 302/34 and 201 of the IPC and sentenced them as described above.

8. Learned counsel for the appellants submits that there is no eyewitness to the said incident and the prosecution has failed to establish the guilt of the accused through circumstantial evidence as none of the circumstances relied upon by the prosecution has been proved by any cogent evidence. However, learned trial Court relying upon the Panchanama of Ex.P/6 and further relying upon the circumstance of last seen together, recovery of articles on the memorandum of appellants, has held the appellants guilty of the offence.

9. On the other hand, learned counsel for the State supports the impugned judgment of the trial Court.

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10. We have heard learned counsel for the respective parties and perused the evidence available on record.

11. Homicidal death of deceased Mangal Sai Khadia is not in dispute. Even otherwise from perusal of the postmortem report of Ex.P/10 homicidal death of deceased Mangal Sai Khadia is established as in the postmortem report Dr. Upadhyaya had found two lacerated wounds over right side of head and one lacerated wound over right side of the face below and lateral to right eye of the deceased and on internal examination found right mandible bone, left, second, third, fourth ribs, bobby of sternum and right, sixth, seventh, eighth ribs broken and opined that cause of death was asphyxia which was caused because of compression of chest due to blunt injury over chest and the same was homicidal in nature.

12. Now the second question is– whether the appellants are responsible for death of deceased Mangal Sai?

13. Learned trial Court has held the appellants guilty on the basis of circumstantial evidence which is as follows;

a) That P.W.6 Phul Singh has stated that appellants Sukru and Lalsai had called deceased Mangal Sai for taking *kosna* and thereafter his dead body was found from the well of Mangal Kunwar.

b) That the trail of blood drops was found emanated from the house of accused Lalsai up to the well from where the dead body of deceased was recovered.

c) That Panchanama of Ex.P/6 was prepared in the presence of Narayan Prasad Paikra, Sudarshan, Dayaram, Ghurau and Tarachand Paikra and that hostile witnesses Tarachand, Narayan and Ghurau have admitted their signatures over Ex.P/6 and have also admitted their signatures over Ex.P/2 prepared by the police.

d) That the appellants confessed their guilt before Narayan Prasad Paikra, Sudarshan, Dayaram, Ghurau and Tarachand Paikra which was recorded in Ex.P/6.

e) That on the basis of memorandum of appellants Sukru, Ramlal and Lalsai bloodstained club, bloodstained wearing apparels of the deceased and accused were seized and on the other seized articles i.e. lungi, soil, club and Dhoti bloodstains were found.

**14.** P.W. 2 Tarachand Paikra - Sarpanch of the village has not supported the case of the prosecution and he has also denied the existence of bloodstains from the well up to the house of accused Lalsai. He has further denied that the document of Ex.P/6 was written by him and submitted that the said document was in fact written as per the directions of Inspector and he simply put his signature without reading the same. P.W. 3 Narayan Prasad has also not supported the prosecution case and he has denied the contents of Ex.P/6 wherein confession of the appellants is said to have been recorded in his presence. He has further denied the existence of bloodstains in the courtyard of Lalsai. P.W. 4 Ghurauram is also hostile as he has categorically stated that the accused persons did not tell him anything. Though this witness has stated that the accused persons had confessed their guilt before the Sarpanch and the bloodstains emanating from the well were found up to the house of Maniram - father of accused Lalsai. P.W. 5 Budhuram has stated that he had seen the bloodstains emanating from the well up to the house of Lalsai and the same were also present in the courtyard and verandah of Lalsai. He has further stated that Maniram informed that accused Sukru and Lalsai had assaulted Mangal Sai with club. Similarly, P.W. 6 Phul Singh – son of the deceased has stated that Sukru and Lalsai called his father for taking *kosna* in his house and thereafter his father did not return in the night and in the morning he found the dead body of his father in the well of Mangal Kanwar when he went to fetch water from the well. He has

further stated that bloodstains were present from the well up to the house of Lalsai and his courtyard and verandah. On being questioned by Sarpanch – Tarachand Paikra, Maniram said that Sukru and Lalsai assaulted the deceased by club. However, P.W. 7 Maniram has denied that the accused persons assaulted the deceased in his presence.

**15.** So far as the circumstances of appellants being last seen with the deceased while he was alive is concerned, in the First Information Report of Ex.P/7 P.W. 4 Ghurauram had informed that the deceased had gone to the house of one Rupdhar Mahkul on invitation at about 7.00 p.m. and thereafter did not return to his house, P.W. 6 Phul Singh has also stated in paragraph-2 of his statement that his father went to the house of Rupdhar Mahkul in the night and he had admitted that as he did not accompany his father to the house of Rupdhar Mahkul he cannot say whether his father reached the house of Rupdhar or not, therefore, the circumstance of appellants being last seen in the company of the deceased while he was alive, has not been established.

**16.** So far as the circumstances of existence of bloodstains from well up to the house of Lalsai are concerned, the same has not been established by the report of F.S.L. and P.W. 7 Maniram has also stated that blood like stains present in his house and verandah are of *kukri* (hen). Therefore, in the absence of report of Serologists the circumstances of existence of bloodstains cannot be held to be established.

**17.** The learned trial Court has further relied upon the document of Ex.P/6 being the Panchanama signed by Narayan Prasad Paikra, Sudarshan, Dayaram, Ghurau and Tarachand Paikra which contains apart from other things the confession of the appellants. However, none of the aforesaid witnesses has stated this fact in their statements before the Court, therefore the Court below was not justified in relying upon the document of Ex.P/6 to hold that the appellants had made extra judicial confession before the aforesaid witnesses. The witnesses of memorandum have also not supported the memorandum of seizure. Even otherwise the articles seized are the articles which are commonly

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found in the houses of villagers and there is no evidence to show that the seized articles contain human blood and therefore, seizure on the basis of memorandum of the accused persons is of no help to the prosecution.

**18.** Thus on the basis of aforesaid analysis, we are of the considered opinion that the prosecution has failed to establish the circumstances which may connect the appellants with the offence and the finding of the trial Court holding the appellants guilty of the offence under Sections 302/34 and 201 of the IPC is erroneous and the same is based on inadmissible evidence.

**19.** In the result, all the three appeals preferred by the appellants are allowed. The impugned judgment of conviction and order of sentence of the trial Court is set aside. The appellants are acquitted of the charges leveled against them and they are directed to be set at liberty forthwith, if not required in any other case.

**Sd/-**
**L.C.BHADOO**
**Judge**

**Sd/-**
**Dhirendra Mishra**
**Judge**